

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claims 19, 27 and 28 are currently being amended. No new matter is added.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 1-24 and 27-29 remain pending in this application.

In paragraphs 1-4 of the Office Action, the drawings are objected to because of handwritten letters and numbers. Applicant has attached hereto formal drawings for Figures 1-6. No new matter is added. Accordingly, withdrawal of the objection to the drawings is respectfully requested.

In paragraphs 5-6 of the Office Action, claims 1-22 and 27-29 are rejected under 35 U.S.C. § 101 as claiming the same invention as that of claims 1-20 of U.S. Patent No. 6,461,945. Applicant respectfully traverses the rejection.

A statutory rejection under 35 U.S.C. § 101 requires identical subject matter. See MPEP§804. “A reliable test for double patenting under 35 U.S.C. § 101 is whether a claim in the application would be literally infringed without literally infringing a corresponding claim in the patent. Is there an embodiment of the invention that falls within the scope of one claim, but not the other? If there is such an embodiment, then identical subject matter is not defined by both claims and statutory double patenting would not exist.” MPEP§804 (emphasis added).

Independent claim 1 in the present application recites the step of siliciding the source region and the drain region to form a silicide layer, the silicide layer extending into the

substrate. Such a step is not recited in any of claims 1-20 of U.S. Patent No. 6,461,945. Accordingly, statutory double patenting cannot exist for claim 1 and its dependent claims 2-11.

Independent claim 12 of the present invention recites two annealing steps. Claims 1-20 of U.S. Patent No. 6,461,945 recite the formation of crystalline layers or crystallizing via solid phase epitaxy. The formation of crystalline layers or crystallizing via solid phase epitaxy is not recited in claim 12. Accordingly, claim 12 and its dependent claims 13-18 and 24 are patentable under 35 U.S.C. § 101 over 6,461,945.

To advance prosecution, independent claims 19 and 27 have been amended to recite a step of forming a conductive region in the source region or the drain region. The conductive region can be embodied as a silicide region such as region 82. Claim 28 is amended for clarity. No new matter is added in the amendments to claims 19 and 27-28. A conductive region or silicide region in the source and drain region is not recited in claims 1-20 of U.S. Patent No. 6,461,945. Accordingly, claim 19 and its dependent claims 20-24 and claim 27 and its dependent claim 28 are patentable under 35 U.S.C. § 101 over U.S. Patent No. 6,461,945 for the similar reason to those discussed above with respect to claim 1.

In paragraphs 7 and 8 of the Office Action, claims 19, 22, 23 and 24 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 6,461,945. Applicant has attached hereto a terminal disclaimer to overcome the obviousness-type double patenting rejection. Accordingly, claims 19, 22, 23 and 24 are patentable over U.S. Patent No. 6,461,945 under the doctrine of obviousness-type double patenting.

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

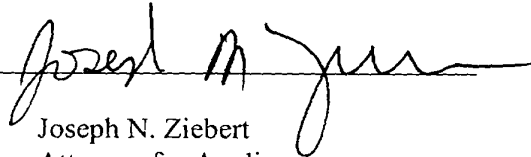
The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 06-1447.

Respectfully submitted,

Date

8-28-03

By



Joseph N. Ziebert
Attorney for Applicant
Registration No. 35,421

FOLEY & LARDNER
777 East Wisconsin Avenue, Suite 3800
Milwaukee, Wisconsin 53202-5306
Telephone: (414) 297-5768
Facsimile: (414) 297-4900